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## REMARKS

Claims 1-30 remain pending.

In the Office Action, the Examiner rejected claims 1, 3-7, 11-13, 15-17, 21-23, and 25-27 under 35 U.S.C. § 102(e) as being anticipated by Miet (US Pat. No. 6,499,008); and rejected claims 2, 8-10, 14, 18-20, 24, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Miet in view of "well-known prior art."

Applicant respectfully traverses the § 102(e) rejection of claims 1, 3-7, 11-13, 15-17, 21-23, and 25-27 over Miet. Independent claims 1, 11, and 21, as amended, require a system and method including, *inter alia*, "distortion threshold template that includes psycho-acoustic thresholds over a range of frequencies." Miet fails to disclose all elements of the system and methods of claims 1, 11, and 21.

Page 2 of the Office Action reads the claimed distortion threshold template, without any explanation, on col. 3, lines 45-62 of Miet. This portion of Miet provides (with emphasis added):

A transmission device according to the invention is illustrated in FIG. 2. Like blocks occurring in FIG. 1 carry like references. A calculation block 21 and a check block 23 have been added to the conventional transmission chain. The calculation block 21 comprises measuring means for making an estimate of the distortion of the output signal of the source coder 11. The source coder block 11 comprises various coders that may be selected by the check block 23. For this purpose, the check block 23 compares the estimate of the distortion to threshold values stored in a table in the memory of the device and selects a source coder from the coders available in the source coder block 11 in dependance on the outcome of the comparison. If the measured distortion is within predetermined acceptable values, the same (current) coder will be used again. Otherwise, a different coder of the plurality of coders in source coder block 11 will be selected based on the measured distortion with respect to the stored threshold values in

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the memory.

Thus, col. 3, lines 45-63 of Miet teaches only threshold distortion values stored in a table. It fails to teach that the values in the memory “include[] psycho-acoustic thresholds over a range of frequencies” as set forth in the claims. Rather, col. 3, lines 45-62 of Miet implies that the threshold distortion *values* stored in the memory each correspond uniquely to one of the possible source coders in block 11.

Because the cited portion, and the remainder, of Miet fails to disclose the claimed “distortion threshold template that includes psycho-acoustic thresholds over a range of frequencies,” the § 102(e) rejection of independent claims 1, 11, and 21 is improper and should be withdrawn. Claims 3-7, 12, 13, 15-17, 22, 23, and 25-27 are allowable at least by virtue of their dependence on claims 1, 11, and 21.

Regarding the § 103(a) rejections of claims 4-7, 9, 13, 15-17, and 24-26, the addition of “well-known prior art,” even if it were proper, fails to cure the deficiencies noted in Miet noted above with respect to claims 1, 11, and 21.

Concerning the Examiner’s “Official Notice,” Applicant notes that only facts are susceptible to Official Notice (see M.P.E.P. § 2144.03), and quoted claim elements cannot be properly considered facts. Applicant traverses such notice as improper for at least this reason. If the Official Notice on pages 4 and 5 of the Office Action is repeated, Applicant requests that proof (e.g., evidence such as a reference or a convincing line of technical reasoning) be provided in accordance with M.P.E.P. § 2144.03.

Reconsideration and allowance of pending claims 1-30 are respectfully requested.

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In the event that any outstanding matters remain in this application, Applicant requests that the Examiner contact Alan Pedersen-Giles, attorney for Applicant, at the number below to discuss such matters.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

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